

IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

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|--------------------------------|---|---------------------|
| CHARLES MESSINA PLUMBING & | : | |
| ELECTRIC CO., INC., a Delaware | : | C.A. No. 05-10-0111 |
| Corporation, | : | |
| | : | |
| Plaintiff/ | : | |
| Counter Defendant, | : | |
| | : | |
| vs. | : | |
| | : | |
| Michael R. Smith | : | |
| | : | |
| Defendant/ | : | |
| Counter Plaintiff | : | |

Decision after trial.

Date of Trial: August 18, 2006

Date Decided: August 24, 2006

Judgment for the Plaintiff and against Defendant.

Craig T. Eliassen, Esquire, Schmittinger & Rodriguez, 414 South State Street, P.O. Box 497, Dover, Delaware 19903-0497 19934, Attorney for Plaintiff/Counter Defendant.

Mark A. McNulty, Esquire, Street & Ellis, P.A., 426 South State Street, P.O. Box 1366, Dover, Delaware 19903-1366, Attorney for Defendant/Counter Plaintiff.

Trader, J.

In this civil action, the plaintiff, Charles Messina Plumbing & Electrical Co., (Messina) may recover from the defendant, Michael R. Smith (Smith), for breach of contract for the reasonable value of the work and labor done subject to an offset for wire supplied by Smith. Alternatively, Messina may recover on a *quantum meruit* basis. Based on the application of economic loss doctrine, Smith is not entitled to damages for loss of rental income.

The relevant facts are as follows: In January 2005, Bob Creedon and Kenneth J. French, representatives of Messina, furnished Smith with an estimate (Defendant's Exhibit No. 1) in the amount of \$3,284.00 for providing electrical service for the main house and the rental apartment located at 12 South Main Street, Camden, Delaware. The estimate indicated that \$944.00 was the cost to wire the rental house and the sum of \$2,340.00 was the costs of materials and labor for the main house. The wiring of the rental unit was completed, inspected, and approved by January 31, 2005. Bob Creedon stated to Smith that the rest of the work would be completed within two weeks. The electrical boxes were initially placed at the bottom of the outside stairs and Smith complained about the location of the boxes. The boxes were then installed under the outside stairs. The completed electrical work failed inspection on April 21, 2005 because of several code violations. Messina corrected the code violations, completed the electrical work, and the electrical service passed inspection on June 23, 2005.

On June 14, 2005, Messina presented Smith with two bills, \$944.00 (Plaintiff's Exhibit No. 2) for wiring of the rental house pursuant to the quotation on the estimate and \$5,610.43 (Plaintiff's Exhibit 1) for materials and labor in connection with the 400 amp service for the house and 200 amp service for the rental unit. Smith has paid \$406.90 for

these services and on October 28, 2005, Messina filed a civil action in this Court requesting judgment against Smith in the amount of \$6,147.53, plus interest from July 21, 2005. Smith filed an Answer denying the allegations of the Complaint and also filed a counterclaim for loss of rental income, damage to the siding, and supplying the plaintiff with ten feet of wiring at a cost of \$27.10.

MESSINA'S CLAIM FOR BREACH OF CONTRACT

Messina agreed to provide 200 amp service for the rental unit and 400 amp service for the main house and Smith agreed to pay for the reasonable value of the services rendered. The price mentioned in "Defendant's Exhibit 1" is only an estimate and is not a definite price. Messina has completed the services that were requested by Smith and he is entitled to be paid the reasonable value of the services rendered. The Plaintiff has established by a preponderance of the evidence the reasonable value of the services rendered was \$6,120.43.

PLAINTIFF'S CLAIM FOR RECOVERY ON A QUANTUM MERUIT BASIS

Messina is also entitled to recovery on a *quantum meruit* basis. In order to recover on a *quantum meruit* basis, Messina must show that valuable services were rendered or materials furnished to Smith, that these services were accepted by Smith and that Messina expected to be paid by Smith. The labor and materials in this case are a benefit to Smith, and a recovery may be had on a *quantum meruit* basis. Although it took Messina from the middle of January until June 23, 2005 to install electrical services for Smith, the completed job was acceptable to Smith. Some of the delay was attributed to the fact that the supplier furnished the wrong tap box.

The bill to wire the rental house in the amount of \$944.00 was consistent with plaintiff's estimate, but the bill to provide the remainder of the electrical services in the amount of \$5,610.43 was considerably higher than plaintiff's original estimate in the amount of \$2,340.00. Notwithstanding this fact, Charles Messina, the president of the company, testified that materials of the value of \$4,800.43 were furnished to Smith's property and the amount charged Smith represented the cost of the materials from the supplier. He also testified that he furnished Smith with copies of the bills for the supplies, and this is not disputed by Smith. Kenneth French also testified that more materials were used in the job than anticipated in the estimate. Therefore, I will allow recovery for the total of materials furnished in the amount of \$4,800.43.

As to the labor, Messina charged Smith \$810.00 and he testified that he was charged \$30.00 per hour rather than the usual hourly rate of \$75.00 per hour. I conclude that the amount charged for the labor performed was reasonable.

SMITH'S COUNTERCLAIM IN TORT IS BARRED BY THE ECONOMIC LOSS DOCTRINE

The economic loss doctrine does not permit recovery in a tort action where the only loss sustained is purely economic. *Christiana Marine Serv. Corp. v. Texaco Fuel & Marine Marketing*, 2002 WL 1335360 at *5 (Del. Super. June 13, 2002). This principle which has evolved over time now applies to all commercial transactions. *Id.* Economic loss is defined as "any monetary loss, costs of repair . . . loss of employment, loss of business or employment opportunities, loss of good will, and diminution in value." *Id.* (citation omitted). This doctrine is based on the notion that the contract provides a better and more specific remedy than tort. *International Fidelity Insurance Co. v. Mattes Electric*, 2002 WL 1400217 at *1 (Del. Super. June 27, 2002).

There is an exception to the economic loss doctrine relating to a cause of action based on negligent misrepresentation. In order for a party to invoke a negligent misrepresentation cause of action, two elements are required. First, the plaintiff must show that the defendant supplied information to the plaintiff for use in business transactions with third parties, and second, that the defendant is in the business of supplying the information. *Christiana Marine Service Corp. v. Texaco Fuel & Marine Marketing, Supra.* at *6.

In the case before me, Smith in his counterclaim has not alleged a cause of action based on negligent misrepresentation. Secondly, Messina is not in the business of supplying information. Messina is in the business of installing electrical services. In *Tolan and Son v. KLLM Architects*, 719 N.E. 2d 288, 296 (Ill. App. 3d. 1999), the Court stated, “a great many businesses exchange information as well as products.” It further stated, “[w]here the information supplied is merely ancillary to the sale of a product or services in connection with the sale, defendant will not be found to be in the business of supplying information for the guidance of others in their business dealings.” *Id.* Since Smith is not within any exception to the economic loss doctrine, his request for recovery for the loss of rent is barred on a tort theory.

SMITH’S COUNTERCLAIM BASED ON THE A BREACH OF EXPRESS OR IMPLIED WARRANTY

Smith contends that he has a counterclaim based on an express warranty found in 6 Del. C. Sec. 2-313, and a violation of implied warranty found in 6 Del.C. Sec. 2-314 and 2-315. The express warranty section found in Sec. 2-313 provides that the goods should conform to the promise made by the seller. The implied warranty provisions of Sec. 2-314 and 315 provide that the goods must be merchantable and shall be fit for the

ordinary purpose for which such goods are used. In the case under consideration, although there was a delay, Smith received electrical service to the main house and apartment on June 23, 2005. The merchandise was fit for the ordinary purpose for which it is used. Therefore, Smith has no cause of action for a violation of an express or implied warranty.

SMITH'S CLAIM FOR BREACH OF CONTRACT

Smith expected that the services would be completely installed by the middle of February, but there was no express contract as to a completion date. The assessment of damages for delay in performance was not within the contemplation of the parties. The Court cannot supply a remedy that was not agreed to by the parties. Accordingly, Smith has no claim for breach of contract. Additionally, Smith has not established by a preponderance of the evidence that he is entitled to damages for the replacement of the siding.

In summary, the plaintiff may recover the sum of \$6,147.53 for providing labor and materials to 12 South Main Street, Camden, Delaware, subject to an offset in the amount of \$27.10 for the supply of wire.

Judgment is entered in behalf of Charles Messina Plumbing & Electrical Company and against Michael Smith for \$6,120.43, plus interest at the legal rate from July 21, 2006, and costs of these proceedings.

IT IS SO ORDERED.

Merrill C. Trader
Judge